

# **ACUPUNCTURE BOARD**

## **INITIAL STATEMENT OF REASONS**

**HEARING DATE: July 14, 2003**

**Subject Matter of Proposed Regulations: Educational Curriculum Requirements**

**Sections Affected: 1399.415, 1399.416, 1399.434, 1399.435 and 1399.436**

1. Amend Sections 1399.415, 1399.416, and 1399.436 and add Sections 1399.434 and 1399.435.

**Problem Addressed:**

To ensure that California consumers receive acupuncture treatment from competent acupuncturists, individuals practicing in this state are subject to regulation and control as a primary health care profession. The Acupuncture Board carries out this mission through the appropriate regulation of licensing, education standards, and enforcement of the Acupuncture Licensing Act. Licenses are issued to only those individuals who complete educational and training programs approved by the Board and pass the California licensing examination.

The Acupuncture Board is directed by California law to establish the educational standards for an individual to become a licensed acupuncturist in the State of California. Furthermore, Business and Professions (B & P) Code Section 4938 requires that an applicant complete an educational and training program approved by the Board. Thus, the Board is required to establish educational standards for the approval of schools and colleges offering an educational program and training in the practice of acupuncture and Oriental medicine.

California B & P Code Section 4926, states that “individuals practicing acupuncture be subject to regulation and control as a primary health care profession.” The Board’s main objective is to require an adequate level of education, which is more consistent with standard healthcare, providing the applicant with the knowledge, skills and abilities to perform as a primary health care professional. A licensed acupuncturist is a first-contact healthcare professional who possesses the skills necessary to provide comprehensive and routine care (preventive, diagnostic, palliative, therapeutic, curative, counseling and rehabilitative) for individuals with common health problems and chronic illnesses that can be managed on an outpatient basis, and who can differentiate health conditions that are amenable to their management from those conditions that require referral or co-management.

All primary health care providers, medical doctors, doctors of osteopathic, doctors of chiropractic, doctors of podiatry, and naturopathic doctors, have a core medical curriculum leading to basic medical understanding. All medical practitioners should have an overview of the strengths and weaknesses of other modalities in order to know when to refer and how best to communicate to those other providers. It is in the patient's best interest that all medical practitioners possess common core knowledge of medical terminology and knowledge to promote good professional communication, patient case management, and continuity of care. Acupuncturists, as well as all providers listed in the California Labor Code Section 3209.3 as "physicians", are required to complete accurate, uniform, and replicable evaluations. The procedures require an evaluation of anatomical loss, functional loss, and the presence of physical complaints to be supported, to the extent feasible, by medical findings based on standardized examinations and testing techniques generally accepted by the medical community.

Chapter 781, Statutes of 2002, amended B & P Code Section 4939 requiring all students entering a training program on or after January 1, 2005 to complete a minimum of 3,000 hours of study pertaining to the practice of acupuncture and Oriental medicine (Attachment A).

Current law requires students to complete a total of 2,348 hours (1,548 theoretical hours and 800 clinical hours) in the following areas:

Traditional Chinese Medicine	660
Clinical	800
Western Sciences	558
Herbal	300
Ethics and Practice Management	30

To comply with the requirements of B & P Code Section 4939(b), the Board is proposing to increase the educational and training program hour requirements to 3,000 hours (2,050 theoretical hours and 950 clinical hours) in the following areas:

Basic Sciences	350
Oriental Medicine Principals, Theories and Treatment (includes 450 hours in herbs)	1,255
Clinical Medicine, Patient Assessment and Diagnosis	240
Case Management	90
Practice Management	45
Public Health	40
Professional Development	30
Clinical Practice	950

The training program will implement an admissions policy that, as a prerequisite for admission into the professional program, requires the satisfactory completion of at least two academic years (60 semester credits/90 quarter credits) of education at the baccalaureate level that is appropriate preparation for graduate level work, or the equivalent. This

admissions proposal should not impose new requirements on the students or the schools, since the policy exists as the industry standard for all acupuncture and Oriental medicine schools of higher education.

California Code of Regulations (CCR) Section 1399.415 is being amended to define that these new requirements shall not apply to persons who were enrolled in an approved acupuncture and Oriental medicine training program prior to January 1, 2005. Such persons shall meet the curriculum and clinical training requirements in effect at the time they commenced their acupuncture training. In addition, this section is being amended to require that examination applicants complete their educational requirements at least thirty (30) days prior to the examination for which they have applied.

In addition, CCR Section 1399.416 is being amended to require examination applicants who have graduated from a foreign educational institution to have their examination support documents reviewed through a foreign education credentials evaluation service. Such a service does not approve the foreign educational institution, but rather determines whether the institution is recognized by a foreign governmental agency, such as a Ministry of Health or Ministry of Education, and whether the courses a candidate has taken are substantially equivalent to the Board's curriculum requirements.

Specific Purpose:

The Acupuncture Board is directed by B & P Code Section 4939 to establish the educational standards for an individual to become a licensed health care professional authorized to practice acupuncture and Oriental medicine in the State of California. There are a total of 39 acupuncture schools throughout the United States, of which 31 are California Acupuncture Board approved schools, 16 of these are located within California.

The proposed regulation will increase the number of curriculum hours a student is required to complete from a Board approved acupuncture school in order to qualify for the licensing examination. The proposed regulation would require a minimum of 2,050 hours of theoretical training and a minimum of 950 hours of clinical instruction, for a total of 3,000 hours.

Factual Basis:

California was one of the first states in this country to regulate and license acupuncturists and has issued approximately 9,300 acupuncture licenses to date.

The acceptance and public demand for acupuncture and Oriental medicine in the last twenty-eight years, which is a short time in the span of the medicine in the United States, is truly one of amazing progress. In 1975 certification standards were legislated in California at 1,350 hours. Approximately 650 acupuncturists were grandfathered into the system. Acupuncture, acupressure, moxibustion, and cupping were initially included in the acupuncturists' Scope of Practice. Physician referral was mandatory to obtain treatment at that time.

In 1979, the Legislature eliminated the requirement that a patient obtain a diagnosis/referral

from an allopathic physician prior to seeking acupuncture treatment. This elevated acupuncturists to independent, primary care professional status (Chapter 488, Statutes of 1979). In 1980, legislation expanded the definition of acupuncture and Scope of Practice to include the techniques of electroacupuncture, cupping, moxibustion, herbs, nutrition, Oriental massage, and exercise (Chapter 1313, Statutes of 1980).

Physician status was achieved in 1988 in the Workers' Compensation system, but only on a temporary basis at that time (Chapter 1496, Statutes of 1988). Since the mid 1980's acupuncturists gained legal privacy protection for professional peer review, gained the right to share ownership in medical corporations, and gained permanent physician status in the Workers' Compensation (Chapter 26, Statutes of 1996). In addition, injured workers' rights were expanded to include licensed acupuncturists as a patient's primary physician.

California historically has led the nation in setting licensing, educational and enforcement standards. Fifteen years ago educational standards were raised, during which time there have been significant legal, political and economic developments in the acupuncture profession that require training advancements to keep pace with new levels of authority and responsibility. In 1985, the educational standards were raised to 2,348 hours. The total number of hours of theoretical training consists of a minimum of 1,548 hours and the total number of hours of clinical instruction consists of a minimum of 800 hours. Criteria for acupuncture training programs is specified in Article 3.5 of the CCR, Section 1399.436. The Board's tutorial program curriculum requirements were increased to 3,748 hours in 1997. In addition, the practical exam (i.e., clinical/hands-on) was eliminated and reformatted into a written exam in 1999.

With the increased use of acupuncture, the need for a common language to facilitate communication in teaching, research, clinical practice and exchange of information had become pressing, therefore in 1989, the World Health Organization (WHO) convened a Scientific Group which approved a "Standard International Acupuncture Nomenclature" which is being widely disseminated and applied. The Scientific Group also recommended that the organization develop a series of statements and guidelines on acupuncture relating to basic training, safety in clinical practice, indications and contraindications, and clinical research. According to WHO's guidelines on basic training and safety in acupuncture, released in 1995 (Attachment B, pages 1-9), a minimum of 2,500 hours is considered the minimal standard for the student of "acupuncture" alone, not including the 450-650 hours for training in herbal medicine. Of the 2,500 hours, 500 hours are recommended for the study of Western medicine. The standards released by WHO are intended to assist national health authorities in setting standards and establishing official examinations, and also medical schools and institutions to define training programs.

A 1997 Senate Office of Research report indicated, educational requirements for licensure of acupuncturists, compared to other workers' compensation "physicians" is inadequate, by contrast, most other categories of workers' compensation physicians are required to have 4,000 hours or four years of specialized academic and clinical training. (Attachment C)

Since the mid 1990's, the Board has been discussing the issue of increasing the curriculum

requirements for the schools and the tutorial programs. With that intent, the Board convened a 1999/2000 Curriculum Task Force to develop the details and rationale for the increase. In addition, a 2001/2002 Competencies and Outcomes Task Force, comprised of professional, educational and Board representatives, was convened to develop the list of curriculum subject matter addressing competencies expected of an entry level practitioner in California. The Competencies and Outcomes Task Force recommended a 3,000 hour curriculum and identified seven didactic categories in addition to clinical practice (Attachment D). The list of proposed didactic and clinical training and a breakdown of hours can be found on page 2 of this ISR. In addition, pursuant to the requirements of B & P Code Section 139, an occupational analysis (OA) was conducted in 2001 to identify tasks performed in current practice and the knowledge, skills and abilities required to perform in practice. The 2001 Occupational Analysis defines the formal description of practice which is the basis for the California acupuncture licensing exam outline, implemented with the January 2003 examination (Attachment E). Implementation of the Competencies and Outcomes Task Force recommendations realigns educational curriculum requirements with the findings of the 2001 OA. With the passage of AB 1943 (Chapter 781, Statutes of 2002), the Board used the information compiled by the Competencies and Outcomes Task Force in defining the entry level curriculum and setting the number of hours necessary for competent practice.

Surveys have been conducted by the Board to licensees, by the professional associations to their members, and by the California Student Association of Oriental Medicine (CSAOM) to acupuncture students to obtain additional information needed to evaluate this issue. A majority of the survey respondents felt additional hours in Western sciences, Traditional Chinese Medicine (TCM) and herbs, would better prepare them for actual practice as an acupuncturist.

The Board's 1996 survey was sent to one thousand licensed acupuncturists with less than six years experience. When asked if they thought additional hours of training were necessary to begin the practice of acupuncture, the following percentages of respondents indicated "yes" and in the following subjects:

Clinic	61.8% Yes	38.2% No
Western	60.2% Yes	39.8% No
TCM	52.4% Yes	47.6% No
Herbs	45.7% Yes	54.3% No
Other	34.6% Yes	65.4% No

A second survey was performed in early 2000 to all individuals licensed within the previous five years (Attachment F). This enabled the Board to compare the results of the two surveys. The majority of the surveyed acupuncturists graduated from 1996 to 1999. The majority indicated training provided "basic" knowledge in acupuncture. However, many had previous medical training of some kind. Thirty-four percent (34%) of respondents indicated they were not prepared to begin practice. Fifty-seven percent (57%) of respondents indicated additional clinic hours were needed to begin practicing, in addition to additional classes in TCM, Western medicine and herbs. All respondents indicated that improvements are also needed in existing clinical training, such as the quality of instructors/courses, knowledgeable

supervisors, and an increase in the number of patients. In addition, seventy-four percent (74%) of respondents indicated they pursued additional training in western medicine, herbs, orthopedics, gynecology and nutrition following graduation. Respondents emphasized they needed additional training in business management, billing systems, and professional conduct.

The Board's proposal to increase curriculum requirements are further supported by the above survey results, particularly because the majority of acupuncture schools have independently recognized areas of deficiencies within the current state mandated curriculum, and have initiated curriculum increases over the last few years with an average of 3,035 hours required to graduate.

CSAOM performed three surveys of current acupuncture students (Attachment G). The third survey consisted of a total of 70 students who responded from three schools. CSAOM provided the results to the Board to include in their review and decision-making. This survey indicated fifty percent (50%) of the students were in favor of curriculum increases, sixty-three percent (63%) agreed on the reason (i.e., future proposed doctorate), ninety-three percent (93%) stated the profession should define curriculum, and ninety-two percent (92%) feel the current programs taught in acupuncture schools lack quality. Responses varied regarding the proposed increases in Western sciences, many felt these requirements could be done as part of the prerequisite requirements.

The current Western biomedical training requirements for licensure in California are inadequate. The majority of primary health care providers, i.e., medical, chiropractic and naturopathic doctors, are required to complete at least a 4,000 hour program, of which approximately 1,275 hours to 2,600 hours are required for basic Western biomedical sciences, not specialized diagnostic procedures, while licensed acupuncturists are currently trained 558 hours. In China, as much as one-third of the five-year educational program to become a doctor of traditional Chinese medicine, consists of Western curriculum requirements. Licensed acupuncturists need this training to protect their patients by knowing how to establish a working diagnosis, when to refer, and how to communicate and interact with Western trained practitioners. Diagnosis and evaluation -- the application of Eastern and Western diagnostic procedures in evaluating patients is a part of the acupuncture training program. The Board's proposed increase in Western sciences would bring the Western medical studies in California close to the level required at China's Guangzhou University of Traditional Chinese Medicine, which is approximately thirty-five percent of the curriculum. Guangzhou University of Traditional Chinese Medicine is one of the oldest colleges of its kind in China and is directly governed by the State Administration of TCM.

Acupuncture in California is relatively and comparatively a safe modality when contrasted with other medical disciplines. The safety and liability issues compared to the malpractice suits of other medical disciplines is minimal. The modalities of acupuncture in general are safe procedures, however the way the practitioner applies the treatment may not always be safe. The Acupuncture Board has a proactive consumer protection program, which has enhanced the positive safety standing of the profession in this state. However, the cases that are enforced by the Board continue to demonstrate deficiencies in the application and

knowledge of the medicine. Examples of Board disciplinary cases within the last two years have included, but are not limited to:

- (1) Performing examinations and/or procedures outside the scope of an acupuncturist (i.e., administering injections, use of medical or unapproved FDA devices, performing medical examinations and/or administering procedures such as pelvic exams without the required specialized training, etc.).
- (2) Unethical and improper practice management (i.e., illegal billings to insurance providers, sexual misconduct, improper advertising, improper use of professional license, use of unearned titles, inadequate or nonexistent patient records, patient records maintained in a foreign language, not following infection control standards, regulations and guidelines of the Health and Safety Code and OSHA).
- (3) Performing incompetently (i.e., puncturing of organs, improper or inadequate diagnosis, minor and severe skin burns, administering toxic herbs damaging skin and/or internal organs, administering inappropriate herbal formulas which resulted in the patient seeking emergency or medical treatment on their own, lack of referrals to appropriate healthcare providers).

The Board recognizes there would be impacts on the fee structure students are required to pay for their education. However, graduation requirements for the majority of acupuncture schools are currently at levels of 2,623 to 3,642 hours, or 3,035 hours when all schools are averaged together (Attachment H). The Board's proposal to increase the curriculum standards to 3,000 hours, at an average cost of \$10.61 per "hour," could generate an increase of \$0.00 to \$4,000 per student. To demonstrate, the Board compared current curriculum requirements and fee structures of seven Board approved acupuncture schools (e.g., two school in the 2,800-hour bracket, two in the 2,900-hour bracket, and three at a level higher than the 3,000-hour bracket). The hourly rate was calculated by dividing program hours by the total tuition and averaging the results of the seven schools. Student costs would not be affected for those schools already near or at the 3,000-hour requirement; however, those students at levels under the 3,000-hours would be affected with the increase. (Attachment I)

There would be insignificant economic impact on the acupuncture schools. The school would, in some cases, be required to teach more courses, however the student pays a fee for the service (i.e., education) provided by the school. In addition, it will be up to each school to determine if these costs would be passed on to the student, and if so, how much. For example, a school could generate more revenue to offset these costs instead of passing them onto the student by expanding their clinics into the community resulting in better community service to the public and enhancing educational and practice standards.

The economic impact on the student is difficult to measure when compared to the educational value gained, versus the cost of the education. The student obtains a greater foundation of the knowledge, skills and abilities necessary to confidently practice acupuncture and Oriental medicine as a "primary health care professional." At a time when acupuncture is mainstreaming into the healthcare system, hospital environment and complementary to conventional medicine, the quality and professional competence of practicing acupuncturists is put to a higher test. Expectations of the consuming public are

raised as the number of patients seeking acupuncture treatment increase and more information is made available to the public (i.e., magazine and newspaper articles, TV, etc.). The benefit to the public health, welfare, and safety and increased effectiveness of patient care is unmeasurable. As survey results indicated, seventy-four percent (74%) of survey respondents indicated they pursued additional training in western medicine, herbs, orthopedics, gynecology and nutrition immediately following graduation, all at an additional cost to the new licensee. All stakeholders, educators, prospective licensees, and patients, benefit in the long run.

The Board proposes to amend CCR Section 1399.415 to designate January 1, 2005 as the effective date to implement the 3,000 hour curriculum requirement which is in compliance with B & P Code Section 4939. This proposed amendment clarifies that a student who is enrolled in an approved educational program on or before December 31, 2004, shall be required to complete the curriculum in effect at the time of enrollment. Students enrolling effective January 1, 2005 shall be required to complete the 3,000 hour curriculum.

The Board also proposes to amend CCR Section 1399.415 to require applicants for examination to complete their educational training program at least thirty (30) days prior to the examination date they have applied to take. Current regulations allow applicants to complete their educational requirement by the day of the examination. This allows individuals who do not qualify to possibly sit for the examination as there is limited time for the schools to notify the Board if a student fails a final exam a day or two before the examination. Requiring students to complete their educational program at least thirty days prior to the examination date allows the school sufficient time to notify the Board if a student does not qualify for the examination. This also provides the Board sufficient time to notify the examination contractor to remove the non-qualified student from all documents and lists associated with the administration of the examination.

Additionally, the Board proposes to amend CCR Section 1399.416 to require foreign trained applicants to submit their transcripts for evaluation by a foreign credential evaluation service. There is no governmental authority that approves or certifies foreign educational credential evaluation services in the United States. However, there are two associations for these services whose members are committed to their respective Codes of Conduct. The Board has identified the National Association of Credentials Evaluation Services, Inc. (NACES) as the association whose members' services would be acceptable to evaluate the foreign credentials of our applicants. The NACES has a larger membership with offices in various locations throughout the United States and is, therefore, more accessible to applicants requiring their service. Foreign credential evaluation services are utilized by many colleges and universities, professional certification programs, and many licensing agencies in the United States. Foreign credential equivalency agencies offer years of expertise and extensive data banks to support their approval determinations and translation of foreign academic hours into U.S. academic hours. These services also will screen documents for forgeries which assists the Board in ensuring authenticity of the foreign educational documents submitted with their application thereby ensuring that only those individuals applying for the examination and licensure are qualified. (Attachment J)



Underlying Data:

- Attachment A - Chapter 781, Statutes of 2002
- Attachment B - World Health Organization (WHO) 1995 Guidelines on Basic Training and Safety in Acupuncture, (pages 1-9).
- Attachment C - 1997 Senate Office of Research Report, regarding acupuncturists in the Workers' Compensation System
- Attachment D - Competencies & Outcomes Task Force, 4/10/02, Report and Recommendations
- Attachment E - California Acupuncture Board, November 2001, Occupational Analysis and Test Plan, (pages 15-31).
- Attachment F - California Acupuncture Board, 2000 Survey to Licensees.
- Attachment G - California Student Association of Oriental Medicine, Student Survey #3, Dated 2/10/00.
- Attachment H - California Acupuncture Board Approved Schools Curriculum Program Hours.
- Attachment I - Survey of Cost per Hour
- Attachment J - National Association of Credentials Evaluation Services, Inc. Association of International Credential Evaluators

Business Impact:

The Acupuncture Board has determined that this proposed regulatory action would have insignificant statewide adverse economic impact directly affecting California business (i.e., acupuncture schools), including the ability of California businesses to compete with businesses in other states.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternative:

No alternative, which was considered, would be either more effective or equally effective as and less burdensome than the proposed regulation.